

**BEFORE THE  
MEDICAL BOARD OF CALIFORNIA  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

**In the Matter of the Accusation  
Against:**

**HARVEY DAVID LYONS, M.D.**

**Case No. 800-2014-007581**

**Physician's and Surgeon's  
Certificate No. C38214**

**Respondent**

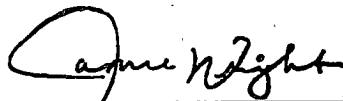
**DECISION**

**The attached Stipulated Settlement and Disciplinary Order is hereby adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.**

**This Decision shall become effective at 5:00 p.m. on October 20, 2017.**

**IT IS SO ORDERED: September 21, 2017.**

**MEDICAL BOARD OF CALIFORNIA**



**Jamie Wright, JD, Chair  
Panel A**

1 XAVIER BECERRA  
Attorney General of California  
2 JUDITH T. ALVARADO  
Supervising Deputy Attorney General  
3 RANDALL R. MURPHY  
Deputy Attorney General  
4 State Bar No. 165851  
California Department of Justice  
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7 *Attorneys for Complainant*

8 **BEFORE THE**  
**MEDICAL BOARD OF CALIFORNIA**  
9 **DEPARTMENT OF CONSUMER AFFAIRS**  
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. 800-2014-007581

12 HARVEY DAVID LYONS, M.D.  
2921 South Saviers Road  
13 Oxnard, CA 93030

OAH No. 2017030778

14 Physician's and Surgeon's Certificate No. C  
38214,

**STIPULATED SETTLEMENT AND  
DISCIPLINARY ORDER**

15  
16 Respondent.

17  
18 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-  
19 entitled proceedings that the following matters are true:

20 PARTIES

21 1. Kimberly Kirchmeyer (Complainant) is the Executive Director of the Medical Board  
22 of California (Board). She brought this action solely in her official capacity and is represented in  
23 this matter by Xavier Becerra, Attorney General of the State of California, by Randall R. Murphy,  
24 Deputy Attorney General.

25 2. Respondent Harvey David Lyons, M.D. (Respondent) is represented in this  
26 proceeding by attorney Derek Thiele, whose address is: Thiele & May, LLP, 3 West Carrillo  
27 Street, Suite 216, Santa Barbara, CA 93101.

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3. On or about August 14, 1978, the Board issued Physician's and Surgeon's Certificate No. C 38214 to Harvey David Lyons, M.D. That Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought in Accusation No. 800-2014-007581, and will expire on October 31, 2017, unless renewed.

## JURISDICTION

4. Accusation No. 800-2014-007581 was filed before the Board, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on February 2, 2017. Respondent timely filed his Notice of Defense contesting the Accusation.

5. A copy of Accusation No. 800-2014-007581 is attached as Exhibit A and incorporated herein by reference.

## ADVISEMENT AND WAIVERS

6. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 800-2014-007581. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

7. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

## CULPABILITY

9. Respondent does not contest that at an administrative hearing, Complainant could establish a prima facie case with respect to the charges and allegations in Accusation No. 800-2014-007581, and that he has thereby subjected his Physician's and Surgeon's Certificate No. C

1 38214 to disciplinary action.

2 10. Respondent agrees that his Physician's and Surgeon's Certificate is subject to  
3 discipline and he agrees to be bound by the Board's probationary terms as set forth in the  
4 Disciplinary Order below.

5 RESERVATION

6 11. The admissions made by Respondent herein are only for the purposes of this  
7 Proceeding, or any other proceedings in which the Medical Board of California or other  
8 professional licensing agency is involved, and shall not be admissible in any other criminal or  
9 civil proceeding.

10 CONTINGENCY

11 12. This stipulation shall be subject to approval by the Medical Board of California.  
12 Respondent understands and agrees that counsel for Complainant and the staff of the Medical  
13 Board of California may communicate directly with the Board regarding this stipulation and  
14 settlement, without notice to or participation by Respondent or his counsel. By signing the  
15 stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek  
16 to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails  
17 to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary  
18 Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal  
19 action between the parties, and the Board shall not be disqualified from further action by having  
20 considered this matter.

21 13. The parties understand and agree that Portable Document Format (PDF) and facsimile  
22 copies of this Stipulated Settlement and Disciplinary Order, including PDF and facsimile  
23 signatures thereto, shall have the same force and effect as the originals.

24 14. In consideration of the foregoing admissions and stipulations, the parties agree that  
25 the Board may, without further notice or formal proceeding, issue and enter the following  
26 Disciplinary Order:

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**DISCIPLINARY ORDER**

IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. C 38214 issued to Respondent HARVEY DAVID LYONS, M.D. is revoked. However, the revocation is stayed and Respondent is placed on probation for three (3) years on the following terms and conditions.

1. **PRESCRIBING PRACTICES COURSE.** Within 60 calendar days of the effective date of this Decision, Respondent shall enroll in a course in prescribing practices approved in advance by the Board or its designee. Respondent shall provide the approved course provider with any information and documents that the approved course provider may deem pertinent. Respondent shall participate in and successfully complete the classroom component of the course not later than six (6) months after Respondent's initial enrollment. Respondent shall successfully complete any other component of the course within one (1) year of enrollment. The prescribing practices course shall be at Respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

A prescribing practices course taken after the acts that gave rise to the charges in the Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board or its designee, be accepted towards the fulfillment of this condition if the course would have been approved by the Board or its designee had the course been taken after the effective date of this Decision.

Respondent shall submit a certification of successful completion to the Board or its designee not later than 15 calendar days after successfully completing the course, or not later than 15 calendar days after the effective date of the Decision, whichever is later.

2. **MEDICAL RECORD KEEPING COURSE.** Within 60 calendar days of the effective date of this Decision, Respondent shall enroll in a course in medical record keeping approved in advance by the Board or its designee. Respondent shall provide the approved course provider with any information and documents that the approved course provider may deem pertinent. Respondent shall participate in and successfully complete the classroom component of the course not later than six (6) months after Respondent's initial enrollment. Respondent shall successfully complete any other component of the course within one (1) year of enrollment. The medical

1 record keeping course shall be at Respondent's expense and shall be in addition to the Continuing  
2 Medical Education (CME) requirements for renewal of licensure.

3 A medical record keeping course taken after the acts that gave rise to the charges in the  
4 Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board  
5 or its designee, be accepted towards the fulfillment of this condition if the course would have  
6 been approved by the Board or its designee had the course been taken after the effective date of  
7 this Decision.

8 Respondent shall submit a certification of successful completion to the Board or its  
9 designee not later than 15 calendar days after successfully completing the course, or not later than  
10 15 calendar days after the effective date of the Decision, whichever is later.

11 3. MONITORING - PRACTICE. Within 30 calendar days of the effective date of this  
12 Decision, Respondent shall submit to the Board or its designee for prior approval as a practice  
13 monitor, the name and qualifications of one or more licensed physicians and surgeons whose  
14 licenses are valid and in good standing, and who are preferably American Board of Medical  
15 Specialties (ABMS) certified. A monitor shall have no prior or current business or personal  
16 relationship with Respondent, or other relationship that could reasonably be expected to  
17 compromise the ability of the monitor to render fair and unbiased reports to the Board, including  
18 but not limited to any form of bartering, shall be in Respondent's field of practice, and must agree  
19 to serve as Respondent's monitor. Respondent shall pay all monitoring costs.

20 The Board or its designee shall provide the approved monitor with copies of the Decision  
21 and Accusation, and a proposed monitoring plan. Within 15 calendar days of receipt of the  
22 Decision, Accusation, and proposed monitoring plan, the monitor shall submit a signed statement  
23 that the monitor has read the Decision and Accusation, fully understands the role of a monitor,  
24 and agrees or disagrees with the proposed monitoring plan. If the monitor disagrees with the  
25 proposed monitoring plan, the monitor shall submit a revised monitoring plan with the signed  
26 statement for approval by the Board or its designee.

27 Within 60 calendar days of the effective date of this Decision, and continuing throughout  
28 probation, practice shall be monitored by the approved monitor. Respondent shall make all

1 records available for immediate inspection and copying on the premises by the monitor at all  
2 times during business hours and shall retain the records for the entire term of probation.

3 If Respondent fails to obtain approval of a monitor within 60 calendar days of the effective  
4 date of this Decision, Respondent shall receive a notification from the Board or its designee to  
5 cease the practice of medicine within three (3) calendar days after being so notified. Respondent  
6 shall cease the practice of medicine until a monitor is approved to provide monitoring  
7 responsibility.

8 The monitor(s) shall submit a quarterly written report to the Board or its designee which  
9 includes an evaluation of Respondent's performance, indicating whether Respondent's practices  
10 are within the standards of practice medicine, and whether Respondent is practicing medicine  
11 safely. It shall be the sole responsibility of Respondent to ensure that the monitor submits the  
12 quarterly written reports to the Board or its designee within 10 calendar days after the end of the  
13 preceding quarter.

14 If the monitor resigns or is no longer available, Respondent shall, within 5 calendar days of  
15 learning of such resignation or unavailability, submit to the Board or its designee, for prior  
16 approval, the name and qualifications of a replacement monitor who will be assuming that  
17 responsibility within 15 calendar days. If Respondent fails to obtain approval of a replacement  
18 monitor within 60 calendar days of the resignation or unavailability of the monitor, Respondent  
19 shall receive a notification from the Board or its designee to cease the practice of medicine within  
20 three (3) calendar days after being so notified. Respondent shall cease the practice of medicine  
21 until a replacement monitor is approved and assumes monitoring responsibility.

22 In lieu of a monitor, Respondent may participate in a professional enhancement program  
23 approved in advance by the Board or its designee that includes, at minimum, quarterly chart  
24 review, semi-annual practice assessment, and semi-annual review of professional growth and  
25 education. Respondent shall participate in the professional enhancement program at  
26 Respondent's expense during the term of probation.

27 NOTIFICATION. Within seven (7) days of the effective date of this Decision, the  
28 Respondent shall provide a true copy of this Decision and Accusation to the Chief of Staff or the

1 Chief Executive Officer at every hospital where privileges or membership are extended to  
2 Respondent, at any other facility where Respondent engages in the practice of medicine,  
3 including all physician and locum tenens registries or other similar agencies, and to the Chief  
4 Executive Officer at every insurance carrier which extends malpractice insurance coverage to  
5 Respondent. Respondent shall submit proof of compliance to the Board or its designee within 15  
6 calendar days.

7 This condition shall apply to any change(s) in hospitals, other facilities or insurance carrier.

8 4. OBEY ALL LAWS. Respondent shall obey all federal, state and local laws, all rules  
9 governing the practice of medicine in California and remain in full compliance with any court  
10 ordered criminal probation, payments, and other orders.

11 5. QUARTERLY DECLARATIONS. Respondent shall submit quarterly declarations  
12 under penalty of perjury on forms provided by the Board, stating whether there has been  
13 compliance with all the conditions of probation.

14 Respondent shall submit quarterly declarations not later than 10 calendar days after the end  
15 of the preceding quarter.

16 6. GENERAL PROBATION REQUIREMENTS.

17 Compliance with Probation Unit

18 Respondent shall comply with the Board's probation unit.

19 Address Changes

20 Respondent shall, at all times, keep the Board informed of Respondent's business and  
21 residence addresses, email address (if available), and telephone number. Changes of such  
22 addresses shall be immediately communicated in writing to the Board or its designee. Under no  
23 circumstances shall a post office box serve as an address of record, except as allowed by Business  
24 and Professions Code section 2021(b).

25 Place of Practice

26 Respondent shall not engage in the practice of medicine in Respondent's or patient's place  
27 of residence, unless the patient resides in a skilled nursing facility or other similar licensed  
28 facility.



1        License Renewal

2        Respondent shall maintain a current and renewed California physician's and surgeon's  
3 license.

4        Travel or Residence Outside California

5        Respondent shall immediately inform the Board or its designee, in writing, of travel to any  
6 areas outside the jurisdiction of California which lasts, or is contemplated to last, more than thirty  
7 (30) calendar days. In the event Respondent should leave the State of California to reside or to  
8 practice Respondent shall notify the Board or its designee in writing 30 calendar days prior to the  
9 dates of departure and return.

10       7.    INTERVIEW WITH THE BOARD OR ITS DESIGNEE. Respondent shall be  
11 available in person upon request for interviews either at Respondent's place of business or at the  
12 probation unit office, with or without prior notice throughout the term of probation.

13       8.    NON-PRACTICE WHILE ON PROBATION. Respondent shall notify the Board or  
14 its designee in writing within 15 calendar days of any periods of non-practice lasting more than  
15 30 calendar days and within 15 calendar days of Respondent's return to practice. Non-practice is  
16 defined as any period of time Respondent is not practicing medicine as defined in Business and  
17 Professions Code sections 2051 and 2052 for at least 40 hours in a calendar month in direct  
18 patient care, clinical activity or teaching, or other activity as approved by the Board. If  
19 Respondent resides in California and is considered to be in non-practice, Respondent shall  
20 comply with all terms and conditions of probation. All time spent in an intensive training  
21 program which has been approved by the Board or its designee shall not be considered non-  
22 practice and does not relieve Respondent from complying with all the terms and conditions of  
23 probation. Practicing medicine in another state of the United States or Federal jurisdiction while  
24 on probation with the medical licensing authority of that state or jurisdiction shall not be  
25 considered non-practice. A Board-ordered suspension of practice shall not be considered as a  
26 period of non-practice.

27       In the event Respondent's period of non-practice while on probation exceeds 18 calendar  
28 months, Respondent shall successfully complete the Federation of State Medical Board's Special

1 Purpose Examination, or, at the Board's discretion, a clinical competence assessment program  
2 that meets the criteria of Condition 18 of the current version of the Board's "Manual of Model  
3 Disciplinary Orders and Disciplinary Guidelines" prior to resuming the practice of medicine.

4 Respondent's period of non-practice while on probation shall not exceed two (2) years.

5 Periods of non-practice will not apply to the reduction of the probationary term.

6 Periods of non-practice for a Respondent residing outside of California will relieve  
7 Respondent of the responsibility to comply with the probationary terms and conditions with the  
8 exception of this condition and the following terms and conditions of probation: Obey All Laws;  
9 General Probation Requirements; Quarterly Declarations; Abstain from the Use of Alcohol and/or  
10 Controlled Substances; and Biological Fluid Testing.

11 9. COMPLETION OF PROBATION. Respondent shall comply with all financial  
12 obligations (e.g., restitution, probation costs) not later than 120 calendar days prior to the  
13 completion of probation. Upon successful completion of probation, Respondent's certificate shall  
14 be fully restored.

15 10. VIOLATION OF PROBATION. Failure to fully comply with any term or condition  
16 of probation is a violation of probation. If Respondent violates probation in any respect, the  
17 Board, after giving Respondent notice and the opportunity to be heard, may revoke probation and  
18 carry out the disciplinary order that was stayed. If an Accusation, or Petition to Revoke  
19 Probation, or an Interim Suspension Order is filed against Respondent during probation, the  
20 Board shall have continuing jurisdiction until the matter is final, and the period of probation shall  
21 be extended until the matter is final.

22 11. LICENSE SURRENDER. Following the effective date of this Decision, if  
23 Respondent ceases practicing due to retirement or health reasons or is otherwise unable to satisfy  
24 the terms and conditions of probation, Respondent may request to surrender his or her license.  
25 The Board reserves the right to evaluate Respondent's request and to exercise its discretion in  
26 determining whether or not to grant the request, or to take any other action deemed appropriate  
27 and reasonable under the circumstances. Upon formal acceptance of the surrender, Respondent  
28 shall within 15 calendar days deliver Respondent's wallet and wall certificate to the Board or its

designee and Respondent shall no longer practice medicine. Respondent will no longer be subject to the terms and conditions of probation. If Respondent re-applies for a medical license, the application shall be treated as a petition for reinstatement of a revoked certificate.

12. PROBATION MONITORING COSTS. Respondent shall pay the costs associated with probation monitoring each and every year of probation, as designated by the Board, which may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of California and delivered to the Board or its designee no later than January 31 of each calendar year.

ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Derek Thiele. I understand the stipulation and the effect it will have on my Physician's and Surgeon's Certificate. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Medical Board of California.

DATED: 6/27/2017 H. David Lyons MD  
HARVEY DAVID LYONS, M.D.  
*Respondent*

I have read and fully discussed with Respondent HARVEY DAVID LYONS, M.D. the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: 6/30/17 [Signature]  
DEREK THIELE  
*Attorney for Respondent*

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ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully  
submitted for consideration by the Medical Board of California.

Dated: 7-7-17

Respectfully submitted,

XAVIER BECERRA  
Attorney General of California  
JUDITH T. ALVARADO  
Supervising Deputy Attorney General



RANDALL R. MURPHY  
Deputy Attorney General  
*Attorneys for Complainant*

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**Exhibit A**

**Accusation No. 800-2014-007581**

1 KATHLEEN A. KENEALY  
Acting Attorney General of California  
2 JUDITH T. ALVARADO  
Supervising Deputy Attorney General  
3 RANDALL R. MURPHY  
Deputy Attorney General  
4 State Bar No. 165851  
California Department of Justice  
5 300 South Spring Street, Suite 1702  
Los Angeles, California 90013  
6 Telephone: (213) 897-2493  
Facsimile: (213) 897-9395  
7 *Attorneys for Complainant*

FILED  
STATE OF CALIFORNIA  
MEDICAL BOARD OF CALIFORNIA  
SACRAMENTO February 2, 2017  
BY: [Signature] ANALYST

8  
9 **BEFORE THE**  
**MEDICAL BOARD OF CALIFORNIA**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. 800-2014-007581

12 Harvey Lyons, M.D.  
2921 South Saviers Road  
13 Oxnard, CA 93030

**A C C U S A T I O N**

14 Physician's and Surgeon's Certificate  
No. C 38214,

15  
16 Respondent.

17 Complainant alleges:

18 **PARTIES**

19 1. Kimberly Kirchmeyer (Complainant) brings this Accusation solely in her official  
20 capacity as the Executive Director of the Medical Board of California, Department of Consumer  
21 Affairs (Board).

22 2. On or about August 14, 1978, the Medical Board issued Physician's and Surgeon's  
23 Certificate Number C 38214 to Harvey Lyons, M.D. (Respondent). The Physician's and  
24 Surgeon's Certificate was in full force and effect at all times relevant to the charges brought  
25 herein and will expire on October 31, 2017, unless renewed.

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## JURISDICTION

3. This Accusation is brought before the Board, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. The Medical Practice Act ("Act") is codified at sections 2000-2521 of the Business and Professions Code.

5. Pursuant to Code section 2001.1, the Board's highest priority is public protection.

6. Section 2004 of the Code states:

"The board shall have the responsibility for the following:

"(a) The enforcement of the disciplinary and criminal provisions of the Medical Practice Act.

"(b) The administration and hearing of disciplinary actions.

"(c) Carrying out disciplinary actions appropriate to findings made by a panel or an administrative law judge.

"(d) Suspending, revoking, or otherwise limiting certificates after the conclusion of disciplinary actions.

"(e) Reviewing the quality of medical practice carried out by physician and surgeon certificate holders under the jurisdiction of the board.

"..."

7. Code section 2227, subdivision (a), provides as follows:

"(a) A licensee whose matter has been heard by an administrative law judge of the Medical Quality Hearing Panel as designated in Section 11371 of the Government Code, or whose default has been entered, and who is found guilty, or who has entered into a stipulation for disciplinary action with the board, may, in accordance with the provisions of this chapter:

"(1) Have his or her license revoked upon order of the board.

"(2) Have his or her right to practice suspended for a period not to exceed one year upon order of the board.

"(3) Be placed on probation and be required to pay the costs of probation monitoring upon order of the board.

1           “(4) Be publicly reprimanded by the board. The public reprimand may include a  
2 requirement that the licensee complete relevant educational courses approved by the board.

3           “(5) Have any other action taken in relation to discipline as part of an order of  
4 probation, as the board or an administrative law judge may deem proper.

5           “(b) Any matter heard pursuant to subdivision (a), except for warning letters, medical  
6 review or advisory conferences, professional competency examinations, continuing education  
7 activities, and cost reimbursement associated therewith that are agreed to with the board and  
8 successfully completed by the licensee, or other matters made confidential or privileged by  
9 existing law, is deemed public, and shall be made available to the public by the board pursuant to  
10 Section 803.1.”

11           8.     Section 2234 of the Code, states:

12           “The board shall take action against any licensee who is charged with unprofessional  
13 conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not  
14 limited to, the following:

15           “(a) Violating or attempting to violate, directly or indirectly, assisting in or abetting  
16 the violation of, or conspiring to violate any provision of this chapter.

17           “(b) Gross negligence.

18           “(c) Repeated negligent acts. To be repeated, there must be two or more negligent  
19 acts or omissions. An initial negligent act or omission followed by a separate and distinct  
20 departure from the applicable standard of care shall constitute repeated negligent acts.

21           “(1) An initial negligent diagnosis followed by an act or omission medically appropriate for  
22 that negligent diagnosis of the patient shall constitute a single negligent act.

23           “(2) When the standard of care requires a change in the diagnosis, act, or omission that  
24 constitutes the negligent act described in paragraph (1), including, but not limited to, a  
25 reevaluation of the diagnosis or a change in treatment, and the licensee’s conduct departs from the  
26 applicable standard of care, each departure constitutes a separate and distinct breach of the  
27 standard of care.

28           “(d) Incompetence.



1       “(e) The commission of any act involving dishonesty or corruption which is substantially  
2 related to the qualifications, functions, or duties of a physician and surgeon.

3       “(f) Any action or conduct which would have warranted the denial of a certificate.

4       “(g) The practice of medicine from this state into another state or country without meeting  
5 the legal requirements of that state or country for the practice of medicine. Section 2314 shall not  
6 apply to this subdivision. This subdivision shall become operative upon the implementation of  
7 the proposed registration program described in Section 2052.5.

8       “(h) The repeated failure by a certificate holder, in the absence of good cause, to  
9 attend and participate in an interview by the board. This subdivision shall only apply to a  
10 certificate holder who is the subject of an investigation by the board.”

11       9.     Section 2242 of the Code states:

12       “(a) Prescribing, dispensing, or furnishing dangerous drugs as defined in Section 4022  
13 without an appropriate prior examination and a medical indication, constitutes unprofessional  
14 conduct.

15       “(b) No licensee shall be found to have committed unprofessional conduct within the  
16 meaning of this section if, at the time the drugs were prescribed, dispensed, or furnished, any of  
17 the following applies:

18       “(1) The licensee was a designated physician and surgeon or podiatrist serving in the  
19 absence of the patient’s physician and surgeon or podiatrist, as the case may be, and if the drugs  
20 were prescribed, dispensed, or furnished only as necessary to maintain the patient until the return  
21 of his or her practitioner, but in any case no longer than 72 hours.

22       “(2) The licensee transmitted the order for the drugs to a registered nurse or to a licensed  
23 vocational nurse in an inpatient facility, and if both of the following conditions exist:

24       “(A) The practitioner had consulted with the registered nurse or licensed vocational  
25 nurse who had reviewed the patient’s records.

26       “(B) The practitioner was designated as the practitioner to serve in the absence of the  
27 patient’s physician and surgeon or podiatrist, as the case may be.

28       “(3) The licensee was a designated practitioner serving in the absence of the patient’s

1 physician and surgeon or podiatrist, as the case may be, and was in possession of or had utilized  
2 the patient's records and ordered the renewal of a medically indicated prescription for an amount  
3 not exceeding the original prescription in strength or amount or for more than one refill.

4 “(4) The licensee was acting in accordance with Section 120582 of the Health and Safety  
5 Code.”

6 10. Section 2266 of the Code states: The failure of a physician and surgeon to maintain  
7 adequate and accurate records relating to the provision of services to their patients constitutes  
8 unprofessional conduct.

9 11. Health and Safety Code section 11154 states:

10 “(a) Except in the regular practice of his or her profession, no person shall knowingly  
11 prescribe, administer, dispense, or furnish a controlled substance to or for any person or animal  
12 which is not under his or her treatment for a pathology or condition other than addiction to a  
13 controlled substance, except as provided in this division.”

14 12. Health and Safety Code section 11173 states in relevant part:

15 “(a) No person shall obtain or attempt to obtain controlled substances, or procure or  
16 attempt to procure the administration of or prescription for controlled substances, (1) by fraud,  
17 deceit, misrepresentation, or subterfuge; or (2) by the concealment of a material fact.

18 (b) No person shall make a false statement in any prescription, order, report, or  
19 record, required by this division.”

## 20 FACTS

### 21 Patient F.T.<sup>1</sup>

22 13. F.T., a deaf, blind, sixty-seven year old female, initially presented to Respondent on  
23 or about March 13, 2014, with complaints of chronic pain.

24 14. In July, 2014, F.T. was admitted to the Intensive Care Unit at St. John's Pleasant  
25 Valley Hospital in Camarillo, California for a drug overdose and was put on life support. The  
26 medications that she had overdosed on appear to have been prescribed by Respondent.

27 \_\_\_\_\_  
28 <sup>1</sup> Patients herein are identified by initials to protect their privacy.

1        15. F.T.'s sister reported to Respondent that F.T. was a confirmed drug addict and had  
2 been admitted to the hospital five times since December 2013, all for drug overdoses.

3        16. F.T.'s sister advised Respondent's office of the July, 2014, admission into the ICU  
4 and the reasons therefore.

5        17. F.T. was released from the ICU and again went to see Respondent on or about July 31,  
6 2014. Respondent prescribed F.T. morphine<sup>2</sup> and oxycodone<sup>3</sup>, as he had done in the past.

7        18. F.T. received additional prescriptions for morphine, acetaminophen<sup>4</sup> and oxycodone  
8 from Respondent on September 15, 2014.

9        19. On November 15, 2014, F.T., was found dead in her apartment from accidental acute  
10 morphine intoxication.

11       20. A Controlled Substances Utilization Review and Evaluation System (CURES) Patient  
12 Activity Report revealed that F.T., was receiving prescriptions from another physician for  
13 oxycodone during the period that Respondent was prescribing morphine, acetaminophen and  
14 oxycodone to F.T.

15       21. Respondent was unaware of the additional prescribing that running a CURES report  
16 would have revealed to him.

17       22. The medical records for F.T., show that at no time was an adequate and sufficient  
18 history obtained and Respondent failed to document clarifying information about the medical  
19 problems being treated by the controlled substance medications. No opioid risk scoring was done  
20 and most of Respondent's patients smoke marijuana and are former addicts.

21       23. Respondent never performed an appropriate examination and failed to document  
22 issues related to the controlled substance medication prescriptions. In fact, the only examination  
23 performed by Respondent was a minimal examination performed on the first visit, and parts of  
24 that examination are of questionable accuracy (ear, eye, examination for a blind and deaf patient).

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25  
26       <sup>2</sup> Morphine is a potent opiate analgesic drug that is used to relieve severe pain.

27       <sup>3</sup> Oxycodone is an opioid analgesic derived from morphine.

28       <sup>4</sup> Acetaminophen is an aspirin related compound used to reduce fever.

24. Respondent's sole examination on the first visit showed no musculoskeletal abnormalities to justify the opioid medications.

25. F.T.'s precipitous drop in weight was ignored by Respondent. At the time of death F.T. weighed only 95 pounds. At the last visit with Respondent on October 21, 2014, F.T. weighed only 94 pounds, yet Respondent did not take any action as a result.

26. Respondent saw F.T. for over six months during which she lost nearly 15% of her body weight. This weight loss is indicative and meets the criteria for Protein Calorie Malnutrition. Respondent failed to recognize this rapidly developing condition and failed to evaluate the weight loss reasons or direct her to see her primary physician to determine the reasons for the weight loss.

27. Respondent did not order any imaging for F.T. despite treating this patient for chronic pain.

28. Respondent never obtained further information to confirm that the patient was taking the prescribed medications. In fact, CURES shows that prior to seeing Respondent F.T. received multiple prescriptions from many physicians and filled them at multiple pharmacies, which are all indicators for abuse and/or diversion.

29. Respondent's records provide no justification for the prescribing of controlled substances, no discussion of risks with F.T. is ever documented, no discussion of treatment goals and functional assessment was ever completed and there is no evidence that alternative treatments were discussed or utilized.

30. Respondent failed to order any referrals for pain management, orthopedics, or other pain assessment and management physicians for F.T., despite ongoing prescriptions for opioids and other controlled substances.

31. Respondent failed to refer F.T. to physical therapy for evaluation and management to assist in the treatment of her chronic pain condition.

32. Respondent failed to monitor F.T.'s use of controlled substances through the use of any methodology, including urine drug screens and a review of CURES reports. The medical records are unclear regarding any testing whatsoever.

1        33. Respondent's chart documentation of generated CURES reports shows two  
2 prescriptions from a Dr. A. However, if Respondent had actually reviewed the CURES report, he  
3 would have known F.T. was receiving opioid prescriptions from Dr. A. In addition, Respondent  
4 ordered no liver function testing, which would be required for Respondent's opioid prescriptions  
5 as well as Dr. A.'s opioid prescriptions if the CURES reports had been reviewed.

6 **Patient S.A.**

7        34. Respondent's first medical records for S.A. are dated December 10, 2013, however,  
8 the records are unclear whether Respondent had seen the patient prior to that date as Respondent  
9 provided a prescription for Acetaminophen with codeine, Carisoprodol, Fentanyl patches and  
10 Lunesta to S.A. that was filled on September 26, 2012.

11        35. The medical records for S.A., show that at no time was an adequate and sufficient  
12 history obtained and Respondent failed to document clarifying information about the medical  
13 problems being treated by the controlled substance medications. No opioid risk scoring was done  
14 and most of Respondent's patients smoke marijuana and are former addicts.

15        36. Respondent never performed an appropriate examination and failed to document  
16 issues related to the controlled substance medication prescriptions.

17        37. Respondent did not order any imaging for S.A., despite treating this patient for  
18 chronic pain.

19        38. Respondent never obtained further information to confirm that the patient was taking  
20 the prescribed medications.

21        39. Respondent's records provide no justification for the prescribing of controlled  
22 substances, no discussion of risks with S.A. is ever documented, no discussion of treatment goals  
23 and functional assessment was ever completed and there is no evidence that alternative treatments  
24 were discussed or utilized.

25        40. Respondent failed to order any referrals for pain management, orthopedics, or other  
26 pain assessment and management physicians for S.A., despite ongoing prescriptions for opioids  
27 and other controlled substances.  
28

1        41. Respondent failed to refer S.A. to physical therapy for evaluation and management to  
2 assist in the treatment of her chronic pain condition.

3        42. Respondent failed to monitor S.A.'s use of controlled substances through the use of  
4 any methodology, including urine drug screens and a review of CURES reports. The medical  
5 records are unclear regarding any testing whatsoever.

6        43. Although S.A. presented with complaints of anxiety, Respondent failed to take a  
7 history, perform an exam, or additional evaluation of anxiety, while prescribing benzodiazepines.

8                                    **FIRST CAUSE FOR DISCIPLINE**  
9                                    **(Unprofessional Conduct-Gross Negligence)**

10        44. By reason of the matters set forth above in paragraphs 13 through 43, incorporated  
11 herein by this reference, Respondent is subject to disciplinary action under Code section 2234,  
12 subdivision (b), in that he engaged in unprofessional conduct constituting gross negligence. The  
13 circumstances are as follows:

14        45. Respondent's prescribing of controlled substances without medical indication to F.T.  
15 and S.A., constitutes gross negligence.

16                                    **SECOND CAUSE FOR DISCIPLINE**  
17                                    **(Unprofessional Conduct-Repeated Negligent Acts)**

18        46. By reason of the matters set forth above in paragraphs 13 through 45, incorporated  
19 herein by this reference, Respondent is subject to disciplinary action under Code section 2234,  
20 subdivision (c), in that he engaged in unprofessional conduct constituting repeated negligent acts.  
21 The circumstances are as follows:

22        47. Respondent's repeated and continuous failure to assess the effects of the prescriptions  
23 given to F.T. and S.A., constitutes repeated negligent acts.

24                                    **THIRD CAUSE FOR DISCIPLINE**  
25                                    **(Prescribing Controlled Substances without Medical Indication)**

26        48. By reason of the matters set forth above in paragraphs 13 through 47, incorporated  
27 herein by this reference, Respondent violated Health and Safety Code, section 11154, in that he  
28 prescribed controlled substances without medical indication for F.T. and S.A.

1 **FOURTH CAUSE FOR DISCIPLINE**  
2 **(Unprofessional Conduct - Violating Statute Regulating Controlled Substances)**

3 49. By reason of the matters set forth above in paragraphs 13 through 48, incorporated  
4 herein by this reference, Respondent is subject to disciplinary action under section 2238 of the  
5 Code, in that he violated Health and Safety Code section 11154. The circumstances are as  
6 follows:

7 50. Respondent prescribed controlled substances without medical indication to F.T. and  
8 S.A., which constitutes a violation of Health and Safety Code section 11154 and, thus, section  
9 2238 of the Code, and constitutes unprofessional conduct.

10 **FIFTH CAUSE FOR DISCIPLINE**  
11 **(Unprofessional Conduct – Prescribing Dangerous Drugs without  
Prior Examination or Medical Indication)**

12 51. By reason of the matters set forth above in paragraphs 13 through 50, incorporated  
13 herein by this reference, Respondent is subject to disciplinary action under section 2242,  
14 subdivision (a) of the Code, in that he prescribed dangerous drugs without an appropriate prior  
15 examination and/or a medical indication to F.T. and S.A. The circumstances are as follows:

16 52. Respondent prescribed dangerous drugs without performing an appropriate prior  
17 examination to F.T. and S.A. Respondent's failure to properly examine any of the foregoing  
18 patients while prescribing dangerous drugs to those patients constitutes a violation of  
19 section 2242, subdivision (a).

20 **SIXTH CAUSE FOR DISCIPLINE**  
21 **(Medical Record Keeping)**

22 53. By reason of the matters set forth above in paragraphs 13 through 52, incorporated  
23 herein by this reference, Respondent violated Code section 2266, in that he failed to keep  
24 adequate records for F.T. and S.A. The circumstances are as follows:

25 54. Respondent's notes for to F.T. and S.A., are incomplete and wholly lacking in  
26 required information concerning the respective patients.

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**PRAYER**

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Medical Board of California issue a decision:

1. Revoking or suspending Physician's and Surgeon's Certificate Number C 38214, issued to Harvey Lyons, M.D.;
2. Revoking, suspending or denying approval of Harvey Lyons, M.D.'s authority to supervise physician assistants, pursuant to section 3527 of the Code;
3. Ordering Harvey Lyons, M.D., if placed on probation, to pay the Board the costs of probation monitoring; and
4. Taking such other and further action as deemed necessary and proper.

DATED: February 2, 2017

  
KIMBERLY KIRCHMEYER  
Executive Director  
Medical Board of California  
Department of Consumer Affairs  
State of California  
*Complainant*

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